Ref. No. 421

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA, Complainant, v. MARIA ESTHER LEMUS, D.B.A. RANCHO LEMUS, Respondent.	8 U.S.C. § 1324a Proceeding CASE NO. 92A00001

ORDER AND PRELIMINARY FINDING
GRANTING MOTION FOR SUMMARY DECISION

1. On January 6, 1992, a Complaint was filed with the Office of the Chief Administrative Hearing Officer (OCAHO), charging Maria Esther Lemus, DBA Rancho Lemus, Respondent herein, with violating Section 274A(a)(10(B) of the Immigration and Nationality Act, 8 U.S.C. § 1324a(a)(1)(B).

2. More specifically, the Complaint charges Respondent with violations of IRCA in two separate counts. Count I alleges that Respondent hired Manuel Bodilla-Aquino, Pedro Coronel Sicatros, and Ismael R. Escobar for employment in the United States, but failed to ensure that these employees completed Section 1 of the Employment Eligibility Verification Form (Form I-9). The Complaint seeks a civil penalty of $250.00 for each of these violations, for a total of $

3. Count II alleges that Valerdi Carrillo, Robert Valerdi Ramon Leonel Castillo for emplo failed to properly complete section 2 of the Employment Eligibility Verification Form. The Complainant seeks a civil penalty in the amount of $200.00 for each of these violations, for a total of $800.00.

4. On January 31, 1992, Respondent filed his answer stating:

> (1) Five of the seven I-9 forms have been corrected, two forms are pending; (2) The penalty for each violation listed is too severe, is biased, and the way the Notice of Intent to Fine is written, -- it lets the

> Immigration and Naturalization Service (U.S. Border Patrol) play the parts of law enforcement, prosecutor, judge, jury, and cashier; (3) Any penalty or fine should be the decision of an impartial law judge allowing the INS -- U.S. Border Patrol to decide is too one sided to be fair and just; (4) Nobody has been victimized. Nobody has stood to lose anything. The men working on the farm were not taking employment away from anyone because they are alleged to be undocumented; (5) Farmers are the backbone of a country. They stand for everything which is good for a country. Farming causes a chain reaction of all things which are good. Everybody stands to gain by farming, directly and indirectly. Farmers are not into crime like drug dealers who cause a chain reaction of everything which is bad. Farmers don't deserve to be treated so harshly for minor paperwork technicalities. If all offenses against the United States were like this one, -- then we wouldn't have a problem to speak of; (6) The U.S. Border Patrol has sent a very loud and clear message about properly completing I-9 Forms. I've learned my lesson; and (7) 'To have a right to do a thing is not at all the same as to be right in doing it.' Dan Bohlmann, Palm Springs, (The Desert Sun, Daily News).

5. On February 18, 1992, Complainant filed a Motion for Summary Decision, as to liability, on all charges alleged in the Complaint arguing:

> (1) On or about January 29, 1992, the Respondent filed its answer. The answer does not deny any of the allegations but states, in pertinent part, that '[f]ive of the seven I-9 Forms have been corrected, two forms are pending. (Exibit [sic] 'A').' Respondent's Answer p. 2. Any allegations that are not expressly denied are deemed admitted. 28 C.F.R. 68.8(c)(1). In addition, by stating that the Forms I-9 have been corrected or are in the process of being corrected, it follows that the Forms I-9 were not properly prepared at the time of the Form I-9 inspection. Therefore, the Respondent impliedly admits violating Section 274(a)(1)(B) of the Act.

> (2) The Respondent's answer lists a number of 'defenses' which seem to be best characterized as good faith defenses. It is well established that good faith is not a defense to paperwork violations. United States v. Broadway Tire, Inc., 1 OCAHO 226 (8/30/90).

6. On March 20, 1992, Respondent filed its answer to the Motion for Summary Decision stating, in part, that:

> . . . There is no dispute on Respondent's behalf to the Government's Motion for Summary Decision, there is no dispute of the facts stated in the Government's motion.

7. In view of the fact that Respondent has admitted to liability on all seven allegations of the Complaint but argues that the proposed fine is excessive because of mitigating factors, the Complainant's Motion for Summary Decision shall be granted with appropriate findings of fact and conclusions of law and a settlement conference shall be held to determine an appropriate civil penalty.

ACCORDINGLY, counsel for the Complainant shall submit to this office, on or before April 27, 1992, a proposed order making findings of fact and conclusions of law as to liability on all charges in the Complaint, consistent with my preliminary findings herein. See 28 C.F.R. § 68.38(d)(1),* United States v. USA Cafe, 1 OCAHO 42 (Feb. 6, 1989); and United States v. Acevedo, 1 OCAHO 95 (Oct. 25, 1989).

It is further ORDERED that pursuant to 28 C.F.R. § 68.13, a settlement conference will be held at my office on April 30, 1992, at 10:00 a.m., to discuss the mitigating factors alleged by Respondent and an appropriate civil penalty. Both parties and their respective counsel or other representative shall be present at this conference. The conference will be informal and will not be recorded.

SO ORDERED, this 9th day of April, 1992.

ROBERT B. SCHNEIDER
Administrative Law J

*Rules of Practice and procedure for Admir
____ Fed. Reg. ____(19--) (to be codifiec
68 (hereinafter cited as 28 C.F.R. § 68).